



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

May 15, 2015

OM 15-07

Mr. Kent C. Novak

**RE: Novak v. Western Coventry Fire District**

Dear Mr. Novak:

The investigation into your Open Meetings Act ("OMA") complaint filed against the Western Coventry Fire District ("Fire District") is complete. By correspondence dated January 8, 2015, you allege the Fire District violated the OMA. More specifically, you allege the Fire District violated R.I. Gen. Laws § 42-46-7(d) when:

1. Its September 16, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
2. Its September 19, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
3. Its October 3, 2013 By-Laws/Charter Committee's approved meeting minutes have been not posted on the Secretary of State's website.
4. Its October 17, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
5. Its October 28, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
6. Its November 4, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
7. Its December 5, 2013 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.

8. Its December 19, 2013 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
9. Its January 9, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
10. Its January 16, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
11. Its February 6, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
12. Its February 20, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
13. Its February 27, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
14. Its May 1, 2014 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.
15. Its May 15, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
16. Its June 19, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
17. Its June 26, 2014 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.
18. Its August 16, 2014 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.
19. Its August 21, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
20. Its September 18, 2014 Board of Director's approved meeting minutes have not been posted on the Secretary of State's website.
21. Its October 21, 2014 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.
22. Its November 18, 2014 Standard Administrative Procedures Committee's approved meeting minutes have not been posted on the Secretary of State's website.

In response to your complaint, we received a substantive response dated March 3, 2015 from the Fire District's legal counsel, J. William W. Harsch, Esquire, who also provided a sworn affidavit from the Chair of the Board of Directors of the Fire District, Mr. John Humble. Attorney Harsch states, in pertinent part:

“the District, being a small and mainly volunteer entity, and having of necessity to address its public safety and health mandate as an absolute priority, does its best to meet transparency and public records requests. Meeting minutes are the responsibility of a part-time District Clerk whose primary employment is an Executive Assistant to the Town Manager of Coventry.

As has been demonstrated repeatedly in the past, the District is committed to meeting all of the requirements of law that apply to it as a public entity. When OMA and APRA compliance concerns have been raised, the District has promptly addressed whatever problem may have been pointed out, including arising from guidance from [the Department of Attorney General]. As indicated in Mr. Humble's [ ] affidavit, the District's Board has made a particular effort to get draft minutes posted in accord with the recently enacted statutory requirement (R.I.G.L. § 42-46-7(b)(2) regarding posting deadlines, and has met this deadline for each meeting since the last compliant filed by Mr. Novak.

In regard to Mr. Novak's specific complaints, I would note the following:

Complaints number[ed] 1-17 are untimely as the statutory 180 day limitation period has expired (R.I.G.L. § 42-46-8(b)). That leaves only complaint[s] number[ed] 18-22 for further response.

As to complaint number[ed] 18 and 19, the draft minutes were posted to the Secretary of State's website on August 31. These were subsequently approved without change as being complete and covering all matters that were discussed at the August 16 meeting of the Standard Administrative Procedures Committee and the August 21, 2014 Board of Director's meeting respectively.

As to complaint number[ed] 20, the draft minutes of the September 18, 2014 Board of Director's meeting were posted on October 14 and the approved minutes were posted on November 9.

As to complaint number[ed] 21, the draft minutes of the October 21 Standard Administrative Procedures Committee meeting were posted on November 9. They were timely reviewed and approved by such Committee without substantive change.

As to complaint number[ed] 22, the draft minutes of the November 18 Standard Administrative Procedures Committee meeting were posted on November 19.

They were timely reviewed and approved by such Committee without substantive change.

\* \* \*

Since the last complaint by Mr. Novak, the District Clerk has been diligent in posting the draft minutes for the meetings of the District within a short time period after the date of the respective meeting. In the majority of instances where draft minutes were posted and there were no substantive changes when such minutes were reviewed and accepted, the Clerk did not remember to change 'draft' to 'approved' on the Secretary of State's posting. She recalls several instances where she was in the process of catching up as to the revised requirements that draft minutes be posted, and the minutes had in fact already been approved. Her template for [Western Coventry Fire District] minutes now provides for a distinction between 'draft' and 'approved.'"

Mr. Humble states, in pertinent part:

"The Clerk of the District, who has attended and recorded the minutes of all the meetings listed, holds a part time position. \* \* \* The recent legislation revision applying yet another reporting requirement on fire districts and setting new filing deadlines is requiring changes to previous procedures and specifically has placed additional demands on the part-time office of the District Clerk.

The minutes posted by the Clerk of the District are what were approved by the Board. When posting the minutes, the Clerk inadvertently did not change the word 'draft' to 'approved' when posting.

\* \* \*

[T]he majority of the complaints in Mr. Novak's January 8, 2015 letter, according to R.I.G.L. § 42-46-8(b) were untimely, yet still knowingly and willfully made by Mr. Novak.

\* \* \*

The Board of Directors of the District, including [Mr. Humble] serves without compensation and on a fully voluntary basis. All members of the Board and of the Committees of the Board are committed to observance of both the OMA and the [Access to Public Records Act] and the record clearly shows that the District has been making a concerted effort in this regard."

You filed a supplemental response dated February 12, 2015, and a rebuttal dated March 10, 2015.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Fire District violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

Among the Fire District's responses are that allegations one through seventeen of your complaint are "untimely as the statutory 180 day limitation period has expired (R.I.G.L. § 42-46-8(b))." Rhode Island General Laws § 42-46-8(b) states:

"[n]o complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred." (Emphasis added).

Respectfully, it does appear that your allegations with respect to the following meeting dates are barred by the statute of limitations: September 16, 2013, September 19, 2013, October 28, 2013, November 4, 2013, December 5, 2013, December 19, 2013, January 9, 2014, January 16, 2014, February 6, 2014, February 20, 2014, February 27, 2014, May 1, 2014 and May 15, 2014. See R.I. Gen. Laws § 42-46-8(b). The minutes of all of these meetings were approved prior to July 1, 2014 and the statute of limitations expired prior to your filing the instant complaint. We therefore focus our investigation on the following meeting minutes: October 3, 2013 (it appears these meeting minutes were never approved), October 17, 2013 (it appears these meeting minutes were never approved), June 19, 2014 (approved on August 21, 2014), June 26, 2014 (approved on August 16, 2014), August 16, 2014 (approved on October 21, 2014), August 21, 2014 (approved on September 18, 2014), September 18, 2014 (approved on October 16, 2014), October 21, 2014 (approved on November 18, 2014) and November 18, 2014 (approved on December 11, 2014). See R.I. Gen. Laws § 42-46-8(b).<sup>1</sup>

Rhode Island General Laws § 42-46-7(d) requires "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not" to "keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting." R.I. Gen. Laws § 42-46-7(d).

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<sup>1</sup> In some respects, the instant complaint contains allegations similar to those presented and examined in Novak v. Western Coventry Fire District, OM 15-03. Indeed, the majority of the allegations raised in this complaint in the exercise of due diligence could have been asserted in your prior complaint. The filing of multiple complaints concerning a similar subject-matter should be discouraged and in the proper future circumstances could be proper cause to dismiss a complaint. See Clark v. West Gloucester Fire District, PR 14-29.

In the instant case, based upon on this Department's review of the evidence presented and our independent research, we have concluded that two (2) meeting minutes, namely October 3, 2013 and October 17, 2013, have never been approved or otherwise made official. We were not presented any evidence from the Fire District that the October 3, 2013 or the October 17, 2013 meeting minutes were approved or otherwise made official. The Fire District violated the OMA when it failed to approve or otherwise deemed official these meeting minutes and post them on Secretary of State's website in accordance with R.I. Gen. Laws § 42-46-7(d).

Regarding the seven (7) meeting minutes that were approved, all of these minutes have been posted on the Secretary of State's website, yet untimely. More specifically, the approved and/or official minutes for the June 19, 2014 meeting were posted on the Secretary of State's website on August 31, 2014, when they should have been posted on or before July 24, 2014; the approved and/or official minutes for the June 26, 2014 meeting were posted on the Secretary of State's website on April 6, 2015, when they should have been posted on or before July 31, 2014; the approved and/or official minutes for the August 16, 2014 meeting were posted on the Secretary of State's website on April 3, 2015 and April 6, 2015, when they should have been posted on or before September 20, 2014; the approved and/or official minutes for the August 21, 2014 meeting were posted on the Secretary of State's website on February 13, 2015, when they should have been posted on or before September 25, 2014; the approved and/or official minutes for the September 18, 2014 meeting were posted on the Secretary of State's website on November 9, 2014, when they should have been posted on or before October 23, 2014; the approved and/or official minutes for the October 21, 2014 meeting were posted on the Secretary of State's website on April 6, 2015, when they should have been posted on or before November 25, 2014; the approved and/or official minutes for the November 18, 2014 meeting were posted on the Secretary of State's website on February 12, 2015 and February 13, 2015, when they should have been posted on or before December 23, 2014. The Fire District violated the OMA when it failed to post its official and/or approved minutes of seven (7) of its open session meetings on the Secretary of State's website within thirty-five (35) days of the meeting.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) "[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];" or (2) "the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA]." R.I. Gen. Laws § 42-46-8.

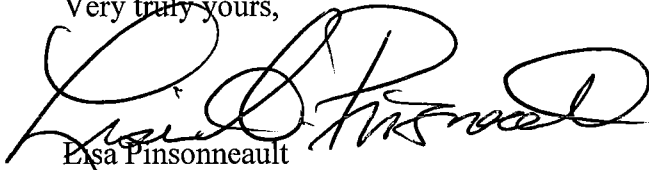
In this instance, we find that the Fire District did not knowingly or willfully violate the OMA. Although this Department recently filed a lawsuit against the Fire District for willfully or knowingly failing to timely post unofficial minutes on the Secretary of State's website, the instant matter concerns the failure to post official and/or approved minutes on the Secretary of State's website, and therefore, arguably, is distinguishable. In any event, to the extent the violations herein are similar to other prior violations (and indeed our pending lawsuit), we are of the opinion that a second lawsuit would largely be duplicative of the efforts and issues presented in the now pending lawsuit. While injunctive relief would be appropriate because, as stated

supra, the minutes for the two (2) meetings must still be posted, we prefer to allow the Fire District the opportunity to remedy the violation on its own. See Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784, 802 (R.I. 2005) (“By scheduling, re-noticing, and re-voting on the challenged appointment, the town council, albeit belatedly, was acting in conformity with both the letter and spirit of the avowed purpose of the OMA – to ensure that ‘public business be performed in an open and public manner.’”). The Fire District should notify this Department within ten (10) business days of its intentions concerning whether it will voluntarily post the Fire District’s approved and/or official minutes for the October 3, 2013 and October 17, 2013 meetings on the Secretary of State’s website. Although we note that “draft” minutes for these two (2) meetings have been filed, these minutes should be approved or otherwise deemed official in accordance with R.I. Gen. Laws § 42-46-7(d). This finding serves as notice to the Fire District that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.

Although the Attorney General will not file suit in this matter at this time, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter, although we reserve the right to reopen this matter should the Fire District not remedy this violation on its own.

Thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa Pinsonneault', written over a horizontal line.

Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: J. William Harsch, Esquire